

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Equal Access and Interconnection)
Obligations Pertaining to Commercial)
Mobile Radio Services)

CC Docket No. 94-54
RM-8012

SEP 12 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**COMMENTS OF
RAM MOBILE DATA USA LIMITED PARTNERSHIP**

RAM Mobile Data USA Limited Partnership ("RMD") hereby submits the following comments with respect to the Notice of Proposed Rulemaking and Notice of Inquiry ("Notice") in the above-captioned proceeding.

I. OVERVIEW.

The Notice seeks comment on equal access and interconnection obligations in connection with commercial mobile radio service ("CMRS") providers. With respect to imposing such obligations on CMRS providers, RMD urges the Commission to bear in mind that equal access and interconnection obligations were designed, respectively, to prevent licensees with control over "bottleneck" facilities from blocking the access of interexchange carriers ("IXCs") to potential customers,¹ and to ensure access to such bottleneck facilities and the public switched network ("PSN") by communications service providers.² Because CMRS providers control no bottleneck facilities³ and, with the exception of cellular providers, lack market

¹ United States v. AT&T, 552 F. Supp. 131, 227 (D.D.C. 1982) *aff'd sub nom Maryland v. U.S.*, 460 U.S. 1001 (1983) ("MFJ").

² Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Declaratory Ruling, 2 FCC Rcd. 2910, 2913-16 (1987) ("Interconnection Order").

³ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-250, 9 FCC Rcd. 1411, 1499 (1994) ("CMRS Second Report").

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power,⁴ rather than advancing Commission policies, the imposition of these obligations on CMRS providers without market power would reduce competition and increase the cost of CMRS services to the public.

In reference to LEC-to-CMRS interconnection arrangements, such interconnection should continue to be provided pursuant to good faith contractual negotiations. To prevent unreasonable discrimination among CMRS providers, however, RMD endorses the Commission's proposal requiring that interconnection agreements contain a clause that would guarantee that the most favorable terms, conditions and rates provided by an LEC to one CMRS provider be made available to all such providers. To enforce such a requirement, RMD supports requiring LECs to file with the Commission all carrier-to-carrier interconnection agreements.

II. THE COSTS OF IMPOSING EQUAL ACCESS OBLIGATIONS ON CMRS PROVIDERS WITHOUT MARKET POWER OUTWEIGH ANY PERCEIVED BENEFITS.

A. Equal Access Obligations Make Sense Only As Applied To Service Providers With Market Power.

Equal access obligations were originally imposed on the Bell Operating Companies ("BOCs") under the MFJ to ensure that all IXC had access to the local exchange network, including the cellular networks of BOC affiliates, on terms equal in type, quality and price to that offered to AT&T and its affiliates.⁵ Such a requirement was found to be in the public interest because it removed artificial barriers to entry and fostered competition among the various IXCs.⁶

The Notice now seeks comment on imposing these obligations on CMRS providers. Because equal access obligations have been imposed in the past where

⁴ Id. at 1467.

⁵ MFJ, 552 F. Supp. at 227.

⁶ Id. at 195-196.

markets were not adequately competitive to promote consumer choice of carrier and a diversity of competitive service offerings,⁷ the Commission correctly notes that whether or not imposing such an obligation on a given CMRS provider is in the public interest depends in large part on the market power of such a provider.⁸

In the CMRS Second Report, the Commission explicitly found that all CMRS providers, other than cellular licensees, currently lack market power.⁹ In a competitive market, consumers have a broad array of diverse communications providers and offerings from which to select, and licensees (without the need for regulatory requirements) must either offer service options customers demand or risk losing market share. Accordingly, extending equal access obligations to CMRS providers lacking market power would impose unnecessary costs on such providers and their customers, without facilitating the access of IXC's to potential customers or encouraging a diversity of competitive services. Such access and diversity of services are already assured by natural market forces.

B. Implementing Equal Access Would Impose Substantial and Unnecessary Costs On RMD And Its Customers.

CMRS providers would incur substantial one-time and recurring costs if required to implement equal access. RMD estimates¹⁰ that the approximate one time cost associated with making the requisite upgrades to its network in order to implement equal access are as follows: \$12,857,000 in hardware upgrades; \$4,715,000 in software upgrades; and \$6,471,000 in other miscellaneous upgrades (*e.g.*, site

⁷ See, *e.g.*, MFI: Specialized Common Carrier, Docket No. 18920, 29 FCC 2d 870 (1970); *recon.* 31 FCC 2d 1106 (1971); *aff'd.* 513 F.2d 1142 (D.C.Cir. 1975); Interconnection Order at 2913.

⁸ Notice at ¶ 31.

⁹ See n. 4, *supra*.

¹⁰ The costs set forth herein are based upon RMD's deployment of 841 base stations throughout 108 LATAs. To the extent that additional base stations are deployed in LATAs in which no base stations are currently located, these costs would increase proportionately.

improvement, reconfiguration of leased lines). RMD would, therefore, be forced to incur approximately \$24,043,000 in one-time costs to implement equal access. Additionally, in order to support the equal access capabilities of its network, RMD would be required to incur an annually recurring cost of approximately \$4,921,560.

Importantly, there has been no demand from an IXC or an RMD customer that RMD provide equal access. In light of the tremendous expense associated with implementing equal access, imposing equal access obligations on RMD — a service provider without market power — would advance no public interest. In fact, notwithstanding the lack of consumer demand, were RMD forced to incur the substantial one-time and recurring costs set forth above, these costs ultimately would be passed through to its customers in the form of higher service fees. Those CMRS providers who could not afford to make the requisite network upgrades would be forced out of business, thereby reducing the diversity of service offerings and the overall level of competition for commercial mobile radio services.

C. Regulatory Parity Objectives Do Not Support Extending Equal Access Obligations To RMD

Because the Notice tentatively concludes that equal access obligations should be imposed on cellular licensees, the Commission notes that regulatory parity considerations may argue in favor of extending these obligations to broadband personal communications services ("PCS") providers and wide-area specialized mobile radio ("SMR") providers, as these services may come to compete with traditional cellular services.¹¹

While RMD takes no position with respect to the imposition of equal access obligations on cellular providers and other providers of cellular-like telephone services, regulatory parity objectives do not require extension of these obligations to

¹¹ Notice at ¶ 45.

wide-area SMR providers operating in the 900 MHz band, such as RMD. It is essential that the Commission not confuse 800 MHz wide-area SMR systems proposing to offer “ESMR” type services (*i.e.*, services featuring full duplex mobile telephony with unlimited PSN interconnection), with 900 MHz SMR systems. In comparison to 800 MHz SMR systems, 900 MHz SMR systems operate on a limited amount of spectrum and over narrow 12.5 kHz channels. Due to the very limited bandwidth available for 900 MHz SMR, there has been no movement toward the provision of “ESMR” type services. Rather, 900 MHz SMR services have been necessarily limited to data services that offer very limited, if any, interconnection, or services that offer more traditional, dispatch-oriented voice applications with very limited interconnect capability.

In this regard, the services provided by RMD in the 900 MHz SMR band are similar to those proposed to be provided by narrowband PCS. The Commission notes that no party in the narrowband PCS proceeding maintained that equal access obligations should be applied to narrowband PCS providers.¹² Accordingly, because RMD's 900 MHz SMR services are more analogous to narrowband PCS than they are to cellular, broadband PCS or ESMR services, the imposition of equal access obligations on RMD would further no regulatory parity objectives.

Moreover, while regulatory parity seeks to regulate similar services in a similar manner, differences in the amount of spectrum licensed and past licensing mechanisms and preferences ensure that cellular and 900 MHz SMR systems will never be truly on an equal plane. There is simply no comparison in terms of overall market power between individual 900 MHz systems that, even by aggregating channels, may be licensed for 1 MHz of capacity with cellular systems that have 25 MHz.

¹² *Id.* at ¶ 47, citations omitted.

Because cellular providers have large blocks of spectrum that can be used to offer diverse services to a broad customer base, cellular operators are able to spread the costs associated with implementing equal access over a large number of individuals. This is not the case with 900 MHz SMR providers: limited spectrum allocations translate into a smaller pool of end-users and a focus on business-oriented users rather than consumer applications. Were RMD required to implement equal access, therefore, each RMD customer (in comparison with an individual cellular customer) would bear a disproportionately heavy share of the costs associated with such implementation.

III. THE COMMISSION SHOULD NOT IMPOSE INTERCONNECTION OBLIGATIONS ON CMRS PROVIDERS LACKING MARKET POWER.

In the past, the Commission has justified the imposition of interstate interconnection obligations on the grounds that they were necessary to ensure access to bottleneck facilities and the PSN.¹³ The Commission, however, found that CMRS providers do not have control over bottleneck facilities¹⁴ and, as discussed above, also found that CMRS providers other than cellular operators lack market power.¹⁵

In light of these findings, the imposition of interconnection obligations on CMRS providers that lack market power would do little (if anything) toward advancing the Commission's policy of facilitating access to bottleneck facilities and the PSN. CMRS providers do not control bottleneck facilities, and existing LEC interconnection obligations already safeguard the access of CMRS providers to the PSN. Thus, in the absence of concerns regarding anti-competitive behavior (concerns that arise only in the context of service providers with market power

¹³ Interconnection Order, 2 FCC Rcd. at 2913-16.

¹⁴ See n. 3, *supra*.

¹⁵ See n. 4, *supra*.

and/or control over bottleneck facilities), the Commission should continue to allow natural market forces guide future CMRS-to-CMRS interconnection arrangements.

Finally, as RMD noted above, regulatory symmetry objectives do not require the extension of interconnection obligations to all CMRS providers, simply by virtue of the fact that cellular operators are now subject to such obligations. While regulatory parity concerns may argue in favor of applying interconnection obligations to other broadband services capable of providing cellular-like voice service (*e.g.*, 800 MHz ESMR and broadband PCS service providers), narrowband services, including 900 MHz SMR services, are sufficiently distinct from traditional voice cellular services that application of interconnection obligations in the interests of achieving regulatory parity with cellular operators is unjustified.

IV. LEC-TO-CMRS INTERCONNECTION SHOULD BE ACCOMPLISHED BY CONTRACT.

LEC-to-CMRS interconnection should, with certain minor adjustments, continue to be accomplished through good faith negotiations between LECs and CMRS providers. This approach provides CMRS operators with a high degree of flexibility to structure their interconnection arrangements around their individual needs and in response to changing technical developments and requirements. Interconnection arrangements provided pursuant to tariff would inhibit substantially this flexibility and, in light of the additional administrative expenses associated with tariffing, result in increased interconnection rates.

In response to the Commission's concerns that individually negotiated interconnection arrangements could give rise to unreasonably discriminatory practices, practices that could particularly disadvantage new market entrants, RMD endorses the Commission's proposal to require all interconnection agreements to contain a clause guaranteeing that the most favorable terms, conditions and rates

provided by an LEC to one CMRS provider be made available to all such providers.¹⁶ RMD also supports the suggestion in the Notice to require LECs to file with the Commission all carrier-to-carrier interconnection arrangements. These requirements would ensure non-discriminatory interconnection to new and existing CMRS providers alike, while preserving the flexibility CMRS providers need.

V. CONCLUSION

In light of the Commission's findings that CMRS providers do not control bottleneck facilities and that CMRS providers other than cellular operators lack market power, the Commission should refrain from imposing equal access and interconnection obligations on CMRS providers without market power. In a competitive market, such obligations would advance no Commission policies but would, instead, impose unnecessary costs on CMRS providers and their customers. These costs would force smaller CMRS providers out of business, thereby reducing overall competition and consumer choice, and compel remaining providers to pass on to end users the costs associated with the requisite network upgrades, thereby increasing the price of mobile services to the public. Plainly, the parity legislation was never intended to bring about such a result.

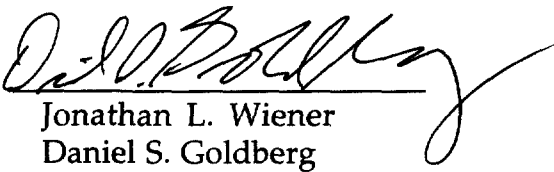
Finally, while LEC-to-CMRS interconnection arrangements should continue to be provided pursuant to contract, the Commission should require that all such contracts contain a "most favored nation" clause and be filed with the Commission.

¹⁶ Notice at ¶ 119.

Such an approach will provide CMRS providers with the flexibility they need to satisfy their unique interconnection requirements, while at the same time guard against discriminatory interconnection arrangements.

Respectfully submitted,

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